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Paper No. 16

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**MAIL**

**MAR 12 2004**

DIRECTOR OFFICE  
TECHNOLOGY CENTER 2600

In re Application of

FERNANDEZ et al.

Application No. 09/823,509

Filed: March 29, 2001

For: INTEGRATED NETWORK FOR  
MONITORING REMOTE OBJECTS

:  
:  
: DECISION ON PETITION  
: TO MAKE SPECIAL  
:  
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This is a decision on the Supplement to Petition filed January 20, 2004 which is treated as Request for Reconsideration of the Petition to Make Special pursuant to 37 CFR §1.102(d) and specifically, MPEP §708.02 section XII to make the application special.

A grantable petition under 37 CFR §1.102(d) and MPEP § 708.02, section XII: Special Status for Applications Relating to Biotechnology, must:

- (A) state that small entity status has been established or include a statement establishing small entity status;
- (B) state that the subject of the patent application is a major asset of the small entity; and
- (C) state that the development of the technology will be significantly impaired if examination of the patent application is delayed, including an explanation of the basis for making the statement.

In addition, to be considered for Special Status under MPEP section XII, the application must be related to the field of Biotechnology. Petitioner stated within the last petition "...the invention relates to a communications method between care-givers and patients and a telemedicine system that enables remote care. Petitioner states within the current petition "A key purpose of the invention is to be implemented in 'non-imaging physical sensor manner,' such as monitoring 'mental activity, medication level, and other similarly monitorable information and signals...Broad biological and medical usages were enumerated for practical purposes, preventing a list and explanation of every possible biotechnological usage. Thus biotechnological objectives are principal to the purpose of the 'integrated network for monitoring remote objects.'"

Webster's New World Dictionary (3<sup>rd</sup> college edition) defines Biotechnology as:

"bi·lo·tech·nol·o|gy (bi'ō tek nāl'ə jē) **n.** the use of the data and techniques of engineering and technology for the study and solution of problems concerning living organisms"

Several sections of the Manual of Patent Examination Procedure define Biotechnology as follows:

Subpart G - Biotechnology Invention Disclosures

DEPOSIT OF BIOLOGICAL MATERIAL

§ 1.801 Biological material.

For the purposes of these regulations pertaining to the deposit of biological material for purposes of patents for inventions under 35 U.S.C. 101, the term biological material shall include material that is capable of self-replication either directly or indirectly.

Representative examples include bacteria, fungi including yeast, algae, protozoa, eukaryotic cells, cell lines, hybridomas, plasmids, viruses, plant tissue cells, lichens and seeds. Viruses, vectors, cell organelles and other non-living material existing in and reproducible from a living cell may be deposited by deposit of the host cell capable of reproducing the non-living material.

[Added, 54 FR 34880, Aug. 22, 1989, effective Jan. 1, 1990]

(A) the field of biotechnology as defined by the following units of the International Patent Classification:

C 12 M      Apparatus for enzymology or microbiology	G 01 N 33/50 (including subdivisions) Chemical analysis of biological material, e.g. blood, urine; testing involving biospecific ligand binding methods; immunological testing
C 12 N      Micro-organisms or enzymes; compositions thereof	A 61 K 39      Medicinal preparations containing antigens or antibodies
C 12 P      Fermentation or enzyme-using processes to synthesise a desired chemical compound or composition or to separate optical isomers from a racemic mixture	A 61 K 48      Medicinal preparations containing genetic material which is inserted into cells of the living body to treat genetic diseases; Gene therapy
C 12 Q      Measuring or testing processes involving enzymes or micro-organisms; compositions or test papers therefor; processes of preparing such compositions; condition-responsive control in microbiological or enzymological processes	A 01 H      New plants or processes for obtaining them; plant reproduction by tissue culture techniques
C 07 K      Peptides	

For information, U.S. classes covering the corresponding subject matter are listed below:

424 Drug, bio-affecting and body treating compositions	530 Chemistry: natural resins or derivatives; peptides or proteins; lignins or reaction products thereof
435 Chemistry: molecular biology and microbiology	536 Organic compounds—part of the class 532-570 series
436 Chemistry: analytical and immunological testing	800 Multicellular living organisms and unmodified parts thereof
514 Drug, bio-affecting and body treating compositions	930 Peptide or protein sequence

As stated in the last decision regarding this issue, inventions that relate to a communications method between care-givers and patients, a telemedicine system that enables remote care or an integrated network (i.e., communications) for monitoring remote objects, is not considered to fall within the scope of applications relating to and classified within the Biotechnology area.

An invention having a generic application in which biological or medical information, among numerous other potential applications in which sensor information may be remotely monitored, does not mean that the disclosed invention is related to Biotechnology as set forth in the classification areas indicated above.

Accordingly, the petition is **DENIED**.

As stated within the last two decision on this matter (paper No. 12, mailed September 5, 2003 and paper No. 14, mailed December 18, 2003), Petitioner may alternatively consider requesting special status under MPEP § 708.02, section VIII.

Otherwise, it is noted that the application is nearing its regular time for examination in the area in which the application has been classified. Therefore, the application will be forwarded to the Technology Center workgroup in charge of the application, for docketing and action in its regular turn.



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